

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE URETHANE
ANTITRUST LITIGATION

)
) MDL No. 1616
)

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) THIS DOCUMENT RELATES TO:
) DIRECT ACTION CASES
)

)
) Case Nos. 08-2617-JWL,
) 09-2026-JWL, 10-2077-JWL
)

**DIRECT ACTION PLAINTIFFS’ UNOPPOSED MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL MEMORANDUM OF LAW ADDRESSING NEW AUTHORITIES**

In late March 2014, the American Bar Association published the second edition of its book *Econometrics: Legal, Practical, and Technical Issues*.¹ The second edition, which includes significant revisions, arrived too late for Direct Action Plaintiffs (“Plaintiffs”) to incorporate it into either their opposition to Dow’s *Daubert* motion (Dkt. 3174) or their reply in support of their motion to strike portions of Dr. Keith Ugone’s supplemental expert report (Dkt. 3173). Defendant The Dow Chemical Company (“Dow”) cited the first edition of *Econometrics* (published in 2005) in its *Daubert* motion. *See* Mem. Supp. Dow’s Mot. Exclude Expert Testimony Pls.’ Damages Expert Dr. Leslie Marx 25 (Dkt. 3156) (“*Daubert* Mot.”). Dow’s expert, Dr. Ugone, also discussed the first edition of *Econometrics* extensively in his supplemental report, which Dow incorporated in its opposition to Plaintiffs’ motion to strike. *See, e.g.*, Dow’s Mem. Opp. DAPs’ Mot. Strike Dr. Ugone’s Report Ex. 1, at 10, 12 (Dkt. 3167-2) (defending paragraphs 50-55 of Dr. Ugone’s supplemental report).

¹ The text was timed to be released in conjunction with the annual spring meeting of the ABA Section of Antitrust Law, held in Washington, D.C. on March 26-28, 2014. *See* 62nd Antitrust Spring Meeting, American Bar Association, http://www.americanbar.org/calendar/2014/03/antitrust_law_2014springmeeting62.html (last visited April 10, 2014).

In addition, on April 4, 2014, the Honorable Lucy Koh of the U.S. District Court for the Northern District of California issued a decision in *In re High-Tech Employee Antitrust Litigation*, No. 11-CV-02509-LHK, 2014 WL 1351040 (N.D. Cal., Apr. 4, 2014), that directly addresses two issues that Dow argued at length in its motion to exclude Dr. Leslie Marx's testimony—statistical significance testing, and the application of the Supreme Court's decision in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2012), to a *Daubert* motion. Plaintiffs would have cited this case in their opposition to Dow's motion had it been issued in time, and believe that a short discussion of Judge Koh's opinion will benefit the Court in its consideration of Dow's motion.

For these reasons, Plaintiffs respectfully request that the Court grant them leave to submit a brief supplemental memorandum of law (attached hereto as Exhibit A) addressing these two new authorities. Plaintiffs have conferred with counsel for Dow and are authorized to represent that Dow does not oppose the relief sought in this motion, but reserves the right to address these supplemental authorities in its reply brief in support of its *Daubert* motion.

April 10, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Court's Order Regarding Service (Doc. 35), I hereby certify that on April 10, 2014 a copy of the foregoing document was filed electronically with the Clerk of the Court through the ECF system, and that the ECF system will send electronic service of the filing to all counsel of record who have registered for ECF notification and receipt of the documents filed in this matter.

/s/ Elaine Metlin
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